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To: 'microsoft.atr(a)usdoj.gov'
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Subject: Microsoft Settlement

Public Comment response
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The Department of Justice has found MicroSoft Corporation guilty of anticompetitive practices. Suggested penalties and remedies, which appear to benefit private software customers, may overlook the damages incurred by state and federal governments (the case originated from several state attorneys-general).

Local and state governments are legally bound to purchase goods and services under competitive bidding practices, or be held liable to the taxpaying public. As MicroSoft has absorbed or driven competitors out of business, governments now purchase software (with maintenance and upgrades) from an exclusive monopoly which is also the highest bidder. Where all other purchasing complies with standard public notice procedures, software that is included with new hardware is now concealed from open public records.

Freedom Of Information Act inquiries on the cost of operating systems and software upgrades for existing hardware are frequently ignored, violating public disclosure law. This, in turn, encourages MicroSoft to increase prices at will and with complete immunity to free market forces. The resultant waste of taxpayer funds prevents governments from addressing urgent public safety and infrastructure maintenance needs.

Free and open source software alternatives, where they exist, are excluded from the public bid process, due to real or perceived incompatibility with MicroSoft formats.

This respondent suggests the following remedies when addressing MicroSoft monopoly, particularly with respect to the taking of Public Funds:

1. Require the use of standard government bid documents and public advertisement/award procedures for all hardware, software, computer maintenance and software upgrades whenever such procurement involves public funding or tax revenue.
2. Require vendors to itemize their bids, showing clear distinctions between the price of each software, operating system software, and networking and internet software. In no case should the price of software be included with hardware purchase. This should not, however prevent volume discounting of any of the above software or hardware. Neither should it prevent the token

listing of discounted and zero-cost software and software-inclusive bundles, providing that EVERY specific product is itemized, and all software is made available separately from hardware at the same price as pre-installed software on new hardware.

3. Require all vendors to list hardware requirements, as well as compatibility issues between MicroSoft and other commercial software, and require the inclusion of Open Source (freely distributed) software comparisons, where known.

4. Require vendors to list, and to offer support for all known commercial and open-source software on bids. Where a vendor is unable to list competitive alternatives, require the purchaser to consider bids from no less than two other vendors.

5. When served Freedom Of Information Act inquiries, allow government officials an amnesty period to resolve multiple-license software violations of MicroSoft User License restrictions. Encourage governments to solicit commercial and open-source alternatives to MicroSoft operating systems, internet browsers, office productivity and specialty software.

6. Remove penalties and protect government employees (individuals and groups) from predice for suggesting, installing or using non-MicroSoft products as alternative tools in their respective fields of employment.

Respectfully submitted,
John Jesmer